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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/890,808      | 11/19/2001  | Emilio Iacobucci     | 205.256             | 6740             |

7590 11/20/2002  
Abelman Frayne & Schwab  
150 East 42nd Street  
New York, NY 10017-5612

EXAMINER

ALEXANDER, REGINALD

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1761

DATE MAILED: 11/20/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/890,808

Applicant(s)

IACOBUCCI, EMILIO

Examiner

Reginald L. Alexander

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 45-85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 78-83 is/are allowed.
- 6) ☒ Claim(s) 45-77, 84 and 85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6. 6) ☐ Other:

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "hydraulic actuation system" recited in claim 45, the "spring sensor" recited in claim 49, the "load cell system" recited in claim 53, the "second heater" recited in claim 61, the "filtering system" recited in claim 66, the "filter" recited in claim 68 and the "serial port" recited in claim 71 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 64 is objected to because of the following informalities: The claim contains what appears to be Trademarks or Tradenames. The presence of these Trademarks is not allowed. Appropriate correction is required.

### ***Specification***

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 45-77, 84 and 85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 45, there is provided no structural connection or function for the recited "hydraulic circuit" or "electrical circuit". The recitation that the circuits are "governed by software" leads to the assumption that there is some form of control means involved. Without a positive recitation of a control means, the claim is vague and indefinite. In claim 58, there is recited no means for performing the function locking the drawer in two positions. In claim 60, there is recited no means for supplying steam. In claim 64, the recited trademark names render the claim indefinite. There is provided no generic description of the elements represented by a trademark name. Claims 73-76 appear to recite a series of method steps for the operation of the device. Since the claims recite an apparatus, the recitation of method steps does not further limit the structure of the apparatus. For this reason the claims are not being given patentable weight. The same can be said for claim 84 where a series of steps for the operation of a device being claimed is recited in the claim. In claim 85, the subject matter is merely redundant. Claim 45 already recites a drawer/heater assembly. Thus, the claim is vague and confusing.

As it has been held that it is "improper" to rely on what are at best speculative assumptions as to the meaning of a claim and then base a rejection under 35 USC 103 thereon, no such rejection(s) has been made. Ex parte Brummer, 12 USPQ 2d 1654; In re Steele, 134 USPQ 292. However, the lack of such a rejection(s) should not be

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construed as meaning that the claim(s) as presently drawn would be patentable if corrected. Any response should carefully consider the prior art of record.

***Allowable Subject Matter***

Claims 78-83 are allowed.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Santi, Piana, Cortese and Klein are cited for their disclosure of a drawer assembly and a heater assembly which can move vertically atop of a brewing area.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 703-308-1594. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7718 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

rla  
November 15, 2002

Reginald L. Alexander  
Primary Examiner  
Art Unit 1761

